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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1118

ELDON STEELE,

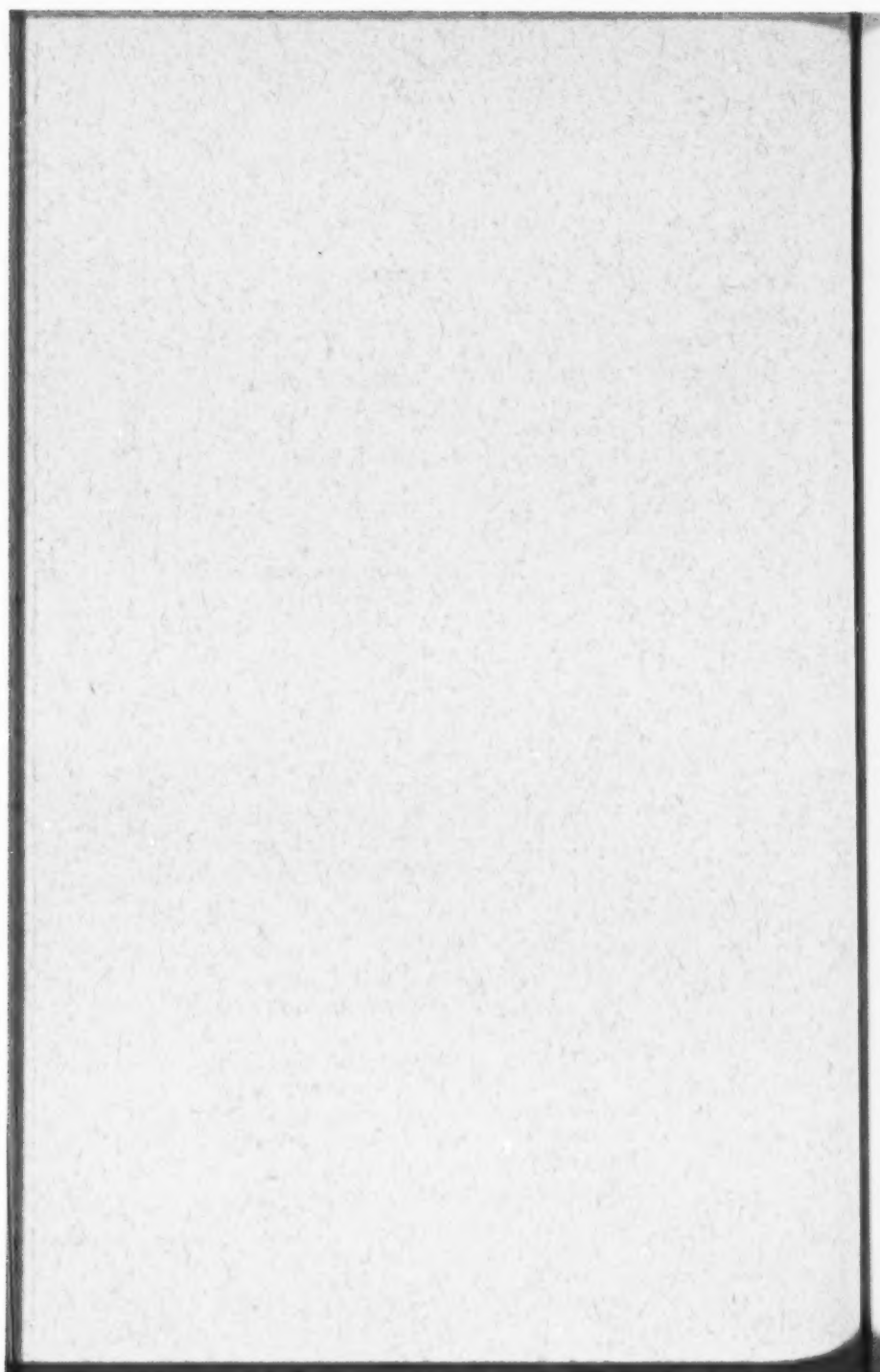
Petitioner,

vs.

THE STATE OF NORTH CAROLINA.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NORTH
CAROLINA AND BRIEF IN SUPPORT THEREOF.

JULIUS C. SMITH,
THOMAS L. PARSONS,
GEORGE S. STEELE, JR.,
Counsel for Petitioner.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1118

ELDON STEELE,

Petitioner,

vs.

THE STATE OF NORTH CAROLINA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Eldon Steele, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of North Carolina, a court of last resort, entered in the above cause on January 7, 1942 (reported below: In Re Steele, 220 N. C. 685, 18 S. E. (2d) 132), reversing the judgment of His Honor, Luther Hamilton, Judge, rendered at the April, 1941, Term of the Superior Court of Bladen County.

Summary Statement of the Matter Involved.

On April 14, 1941, a warrant was issued by John H. Yates, a duly elected and qualified Justice of the Peace of Rockingham Township, Richmond County, North Carolina,

charging petitioner with the crime of public drunkenness and disorderly conduct (R. 6 & 7). On the same day, petitioner, then a young man eighteen years of age, appeared before the said magistrate and pleaded guilty to the charge contained in the warrant (R. 7). Petitioner was then sentenced to thirty days in the County Jail, to be assigned to work on the State Roads, in default of paying the Court Costs of eight dollars and thirty-five cents (R. 7). Two dollars of the Court Costs charged against petitioner was charged as a fee for the magistrate who tried the case (R. 8). Petitioner was duly committed to the County Jail and assigned to work on the Public Roads (R. 8). On April 28, 1941, after the time for appealing from the judgment of the magistrate had expired (N. C. C. S., Sec. 1530), while petitioner was in the custody of George Manning Bostic, superintendent of one of the North Carolina prison camps, and serving said sentence, he applied to the Honorable Luther Hamilton, one of the Judges of the Superior Courts of North Carolina, then holding a term of court in Bladen County, for a writ of *habeas corpus* (R. 9). Petitioner alleged in his petition for writ of *habeas corpus* that he was then in custody; that he had been deprived of his liberty without due process of law, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and contrary to the law of the land, as guaranteed by Section 17 of Article I of the Constitution of North Carolina, in that the magistrate who tried him and received a fee for his conviction had a direct "and substantial pecuniary interest in the ultimate conviction of petitioner, because the said Yates would not have received any pay or compensation for his services in said trial except upon conviction of petitioner * * *"¹ (R. 10). The writ was granted (R. 11).

¹ The statutes setting the fees involved are Chapter 342 of North Carolina Public-Local Laws of 1933, as amended by Chapter 358 of North Carolina Public-Local Laws of 1935.

Upon return to the writ, His Honor found the facts and the law to be as alleged in the petition, and thereupon held that the proceedings and judgment in the trial of petitioner before John H. Yates, Justice of the Peace, "were unconstitutional and void, in *violation of the Fourteenth Amendment to the Constitution of the United States* and Section 17 of Article I of the Constitution of North Carolina in that they *deprived the defendant, Eldon Steele, of his liberty without due process of law* and contrary to the law of the land" (R. 13). Thereupon, His Honor ordered petitioner discharged from custody (R. 13).

Thereafter, the case was carried to the Supreme Court of North Carolina on writ of certiorari granted the twenty-fifth day of September, 1941 (R. 6) on petition therefor lodged in said court by the State, through its Attorney General, Harry McMullan (R. 2 to 6).

The case was heard upon the record, printed briefs and oral argument on the eighteenth day of November, 1941, (R. 19) and on the seventh day of January, 1942, the Supreme Court of North Carolina rendered its judgment reversing the judgment of the Superior Court (R. 18-19). Prior to the judgment of the Supreme Court of North Carolina, petitioner entered the armed forces of the United States and is now serving with the United States Army. For this reason, he has not been taken under capias issued in compliance with the judgment of the Supreme Court of North Carolina. This capias, however, remains a constant threat to his liberty.

Jurisdiction.

1. The jurisdiction of this Court is invoked under the provisions of the United States Judicial Code, Section 237 (b), as amended February 13, 1925, 43 Stat. 936; U. S. C. A., Title 28, Sec. 344 (b).

2. The date of the judgment sought to be reviewed is January 7, 1942, on which date the Supreme Court of the State of North Carolina, the highest court of that State in which a decision could be had where any right, title, privilege or immunity is specially set up or claimed under the Constitution of the United States, rendered a final decision reversing the judgment of the Superior Court of Bladen County which discharged petitioner on return to a writ of *habeas corpus* (R. 18-19). The opinion of the Supreme Court of North Carolina is reported as *In Re Steele*, 220 N. C. 685, 18 S. E. (2d) 132.

3. In his petition for writ of *habeas corpus*, petitioner herein founded his whole claim to discharge from custody on the two grounds that the proceedings and judgment before the Justice of the Peace were in violation of both the Federal and State Constitutions (R. 10). The Federal question raised was whether petitioner had been deprived of due process of law as guaranteed by the Fourteenth Amendment by being subjected to trial on a criminal charge before an inferior judicial tribunal the judge of which had a direct and substantial pecuniary interest in rendering a judgment against him (R. 10). This question was distinctly raised in the original petition for writ of *habeas corpus* and was determined favorably for petitioner by the Superior Court upon the grounds that "Justices of the Peace in Richmond County [where petitioner was tried] are allowed to tax \$2.00 to the costs in criminal actions as fees for the Justices of the Peace trying such actions, said costs to be paid by the defendants if they be found guilty; and that * * * if the defendants be sentenced to the roads or the County Jail for non-payment of the costs, the County is liable to pay half of said fees * * * and that there is no provision under the laws of North Carolina for

the payment of fees * * * if the defendant be acquitted" (R. 12 & 13).

This same question was urged in the printed briefs and in the oral arguments before the Supreme Court of North Carolina and was determined against petitioner (R. 14-19), the Court holding that "the prisoner was lawfully in custody. The writ of *habeas corpus* should have been dismissed" (R. 18).

That this Court may, by *certiorari*, require that there be certified to it for review and determination any cause wherein a final judgment has been rendered by the highest court of a State where any right, privilege or immunity is specially set up and claimed by a party thereto under the Constitution of the United States, and that the instant case, wherein petitioner claims to have been deprived of his rights, privileges and immunities under the due process clause of the Fourteenth Amendment, falls within this general rule, is sustained by the following cases: *Smith v. O'Grady*, 312 U. S. 329, *Herndon v. Lowry*, 301 U. S. 242, and *Powell v. Alabama*, 287 U. S. 45.

This petition was filed the sixth day of April, 1942.

Questions Presented.

1. Whether a trial before an inferior tribunal, without a jury and before a judge whose entire compensation depends upon a conviction of accused, deprives accused of due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States?
2. Whether the *right*, upon the deposit of three dollars by accused, of a trial by a jury of six men in such tribunal, who are presided over by such disqualified officer, would meet the requirements of due process of law?
3. Whether the *right* to appeal to a higher court where there is afforded a trial *de novo* before an impartial judge

and jury, though not exercised by accused, meets the requirements of due process of law?

4. Whether a plea of guilty, without an express waiver, would confer upon such judge the right to proceed with the trial and enter a valid judgment?

5. Whether an accused, who has been sentenced to prison by such disqualified officer, may avail himself of a writ of *habeas corpus* to secure his release from such imprisonment after the time allowed for appealing has expired?

Reasons Relied Upon for Allowance of the Writ.

1. The Supreme Court of the State of North Carolina held that an accused, even though without counsel, is charged with full knowledge of the existence of the disqualification of a judge because of pecuniary interest, and that his mere failure to object to a trial by such a disqualified judge constitutes a waiver by him of the disqualification. (220 N. C. 689, 18 S. E. (2d) 135, R. 18). The decision in this Court in the case of *Patton v. United States*, 281 U. S. 276, held that the waiver of any constitutional right of an accused must be both an intelligent and a competent waiver and that such fact should be clearly determined by the trial court; and, further, that it would be fitting and appropriate for that determination to appear upon the record. The decision of this Court in *Ex Parte Bain*, 121 U. S. 1, held that a party cannot waive a constitutional right when the effect of such waiver is to give a court jurisdiction. The decision of the State court is probably in conflict with those applicable decisions of this Court.

The Supreme Court of North Carolina held that the mere right to appeal from the judgment of a judge disqualified because of pecuniary interest, even though not exercised by accused, afforded him due process of law (220 N. C. 688,

18 S. E. (2d) 135, R. 17); and this was held, even though at the time of the application for writ of *habeas corpus* in the instant case, the time allowed by law (N. C. C. S., Sec. 1530) for taking such appeal had expired (R. 8 & 9). The decision of this court in *Johnston v. Zerbst*, 304 U. S. 458, held that where an accused had been deprived of a constitutional right in the trial court, the right of appeal not exercised by accused did not remedy the defect. The decision of the state court is probably in conflict with that applicable decision of this court.

The Supreme Court of North Carolina held that the judgment of a judge who is disqualified because of pecuniary interest is merely erroneous and can not be collaterally attacked by writ of *habeas corpus* (220 N. C. 689, 18 S. E. (2d) 135, R. 18). The decision of this court in *Hans Nielsen, Petitioner*, 131 U. S. 176, held that where accused has been deprived of the benefit of a constitutional provision securing to him a fundamental right, this is not a mere error in law but justifies a discharge of accused in a *habeas corpus* proceeding. See also *Mooney v. Holohan*, 294 U. S. 103, 112, *Johnson v. Zerbst*, *supra*, and *Smith v. O'Grady*, *supra*. The decision of the state court is probably in conflict with those applicable decisions of this court.

The Supreme Court of North Carolina held that the right to a trial before a fair and impartial tribunal, within the meaning of the due process of law clause of the Fourteenth Amendment, is a personal privilege, and that that constitutional provision is for the benefit of accused *only* and is not founded in public policy (220 N. C. 689, 18 S. E. (2d) 135, (R. 18). This court has not, as yet, decided this point. The case involves a decision on an important and fundamental question of construction of the Fourteenth Amendment.

The Supreme Court of North Carolina held that, where an accused is arraigned for trial before a judge who has a

direct, substantial pecuniary interest in finding him guilty, the failure of accused to object immediately to such disqualification, his subsequent plea of guilty, and his right to appeal to a higher court for a trial *de novo*, were sufficient safeguards against the procedure condemned in the case of *Tumey v. Ohio*, 273 U. S. 210 (220 N. C. 688, 689, 18 S. E. (2d) 135, R. 17). The *Tumey* Case held that a judge with such interest was without jurisdiction to render a judgment against an accused. The decision of the state court is probably in conflict with that applicable decision of this court.

In support of the foregoing petition, your petitioner submits a brief which is attached hereto.

For the reasons heretofore stated, it is respectfully submitted that this petition should be granted.

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